

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

TERRANCE K. ALDEN

PLAINTIFF

versus

JOESPH V. SMITH, WARDEN

and

CATHY EY, COUNSELOR

DEFENDANTS

3: CV05-1735

CASE NO.

FILED

WILLIAMSPORT, PA

AUG 24 2005

MARY L. ANDREA, CLERK

DEPUTY CLERK

PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING
ORDER AND PRELIMINARY INJUNCTION

Named plaintiff, Terrance K. Alden, herein (plaintiff), is proceeding pro se in the above entitled action, files this Motion for Temporary Restraining Order and Preliminary Injunction pursuant to 28 U.S.C. § 1651, or alternatively, Fed. R. Civ. P. 65(b). For the following reasons, the plaintiff urges this Honorable Court to grant the TRO and to set the request for preliminary injunction for a hearing.

A. Introduction

1. Plaintiff is in the process of filing suit against the defendants, for violation of plaintiff's due process rights as well as violations of Eighth Amendment rights of the plaintiff. The defendants Ey and Smith, since December 13, 2004, have acted in reckless disregard of the health and safety, of the plaintiff and continue the course of conduct to date.

Moreover, the defendants Ey and Smith, in combination have deliberately and intentionally acted to prevent the plaintiff from receiving recommended treatment for a serious medical need. The denial of such treatment exposes the plaintiff to undue suffering as well as the threat of tangible residual injury.

The plaintiff suffers the effects of post traumatic stress disorder, which begins with recurrent panic attacks, associated physical pain (post attack), and the actual torture of protracted sleep deprivation.

The plaintiff's condition has been diagnosed by a physician here at U.S.P. Lewisburg, as requiring treatment. The plaintiff's disorder had been successfully treated for five years here with the issued order of the physician.

2. Although it is generally preferable that a complaint be filed before seeking injunctive relief, the plaintiff's suffering will not admit of delay. See, Studebaker Corp. v Gittlin, 360 F2d 692,694 (2nd Cir. 1966) [holding that request for preliminary injunction may be made before a complaint is filed; due to exigencies of the case, affidavit in support of order to show cause properly treated as a complaint for injunction].

3. A memorandum in support of this motion is attached hereto and satisfies the elements for injunctive relief.

4. Plaintiff urges this Honorable Court to set the request for preliminary injunction for hearing at the earliest possible time. The defendant's have been served via first-class U.S. mail.

5. The plaintiff submits that inasmuch as he must advance this cause of action pro se, research of the law and format of the complaint was imperative prior to any notification to the defendants of the plaintiff's intention to seek redress in the Courts. The plaintiff's ability to present the case to the Court with the additional restraints of segregation unit or the enroute transfer.

6. The plaintiff has filed in accord with B.O.P. policy for administrative remedies, and fully notified the parties of the continuing violations of Due Process rights and Eighth Amendment rights, as well as negligent conduct by employees (prison guards).

CONCLUSION

In view of the serious medical needs contronting the plaintiff, the Plaintiff prays this Honorable Court issue a temporary restraining order restraining the defendants or their agents from destroying or modifying the medical records of the plaintiff. Additionally to restore the plaintiff to medically restricted quarters, as prescribed by physician treating a serious medical need. Further, review the plaintiff's condition for surgical repair via second opinion from outside doctor.

CERTIFICATION

I, Terrance K. Alden, certify and swear that the foregoing
Terrance K. Alden
statements made by me are true and correct to the best of my
knowledge and belief. I am aware that if any of the foregoing
statements made by me are willfully false, I am subject to
the penalty for perjury under 28 U.S.C. § 1746 .

I, Terrance K. Alden, declare and certify under the penalty
Terrance K. Alden
of perjury [28 U.S.C. §1746], that the foregoing is true
and correct. Executed On: 8/21/05

CERTIFICATE OF SERVICE

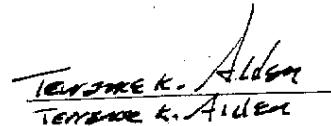
I, Terrence K. Alden, hereby certify that I have served a true and correct copy of the foregoing:

Which is deemed filed at the time it was delivered to prison authorities for forwarding to the court, Houston vs. Lack, 101 L.Ed.2d 245 (1988), upon the court and parties to litigation and/or his/her attorney(s) of record, by placing same in a sealed, postage prepaid envelope addressed to:

and deposited same in the United States Postal Mail at the United States Penitentiary,

Signed on this 8/21 day of 05:

Respectfully Submitted,


Terrence K. Alden
Terrence K. Alden

REG. NO. 02595-135